

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DEVEARL L. BACON,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 06-519-JJF
	:	
THOMAS CARROLL , Warden,	:	
and CARL C. DANBERG , Attorney	:	
General of the State of Delaware,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Devearl L. Bacon, has applied for federal habeas relief, challenging his June 2001 conviction by a Delaware Superior Court jury of five counts of first degree robbery, two counts of possession of a firearm during the commission of a felony, first degree carjacking, two counts of possession of a deadly weapon by a person prohibited, two counts of aggravated menacing, and two counts of wearing a disguise. D.I. 2. By the terms of the Court's order, the answer is due to be filed on November 16, 2006.

2. Counsel has been, and continues to be, diligently working on numerous cases before this Court and the state courts. However, the workload for the Appeals Division attorneys is currently very substantial. In the past four weeks, counsel has filed an answering briefs and an answering supplemental memorandum in appeals before the state supreme court, in addition to two answers to habeas petitions filed in federal district court last week. Counsel anticipates filing an

additional answer to a federal habeas petition in this Court next week. Counsel is doing her best to prioritize cases by date received. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including January 5, 2007, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: November 13, 2006

RULE 7.1.1 CERTIFICATION

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/ Elizabeth R. McFarlan
Deputy Attorney General

Counsel for Respondents

Date: November 13, 2006

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2006, I electronically filed a motion for extension of time with attachment with the Clerk of Court using CM/ECF. I also hereby certify that on November 13, 2006, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Devearl L. Bacon
SBI No. 221242
Delaware Correctional Center
1181 Paddock road
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759
elizabeth.mcfarlan@state.de.us

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and **CARL C. DANBERG**, Attorney
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Civ. Act. No. 06-519-JJF

ORDER

This ____ day of _____, 2006,

WHEREAS, respondents having requested an extension of time in which to file an answer, and

WHEREAS, it appearing to the Court that the requested extension is timely made and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before January 5, 2007.

United States District Judge